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DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-205024

DATE: April 5, 1982

MATTER OF:

Law Enforcement Associates, Inc.

DIGEST:

1. Failure of "equal" product offered in low bid to meet all of the salient characteristics required by a "brand name or equal" specification properly resulted in rejection of bid as nonresponsive.
2. GAO will not review protest challenging bidder's intended compliance with representation in its Buy American certification that domestic end products will be supplied.

Law Enforcement Associates, Inc. (LEA) protests the award of a contract to Hub Uniform Company (Hub) under invitation for bids (IFB) 27-81 issued by the Immigration and Naturalization Service (INS), Department of Justice, for the procurement of 761 riot helmets. LEA contends that the award to Hub was improper because LEA was the low, responsive bidder, and Hub cannot comply with its Buy American certification. The protest is denied as to the first issue and dismissed as to the second.

The Schedule of IFB 27-81 called for the supply of the Seer Model S-1601 helmet, or an equal product meeting certain salient characteristics as to the design and construction of the outer shell, liner, head suspension unit, retention system and visor. By amendment, INS specified that the helmet include the Seer Model S-5005 face shield and Model S-1286 ear and neck protector. No salient characteristics were listed for those accessories.

LEA submitted two bids in response to the solicitation. In one bid it offered the brand name product, but its bid price was the highest of those received. In its other bid LEA offered as an "equal" product, the Premier Model 7000 helmet, at a price which made LEA the third

low bidder. The two lower bidders were rejected by INS and LEA maintains that consequently it was entitled to the award. The firm argues that the Premier model meets the agency's needs and that the agency arbitrarily rejected its bid.

The IFB stated:

" * * * Bids offering 'equal' products * * * will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the invitation."

As this provision states, products offered as "equal" to the brand name item must be evaluated against the salient characteristics of the brand name item as listed in the solicitation. In some respects, INS did not do this and to that extent the protest has merit. For example, one reason given for rejecting the protester's bid was that the ear and neck protector on the Premier 7000 helmet was "completely lined with foam rubber" and therefore would be uncomfortably warm when worn. Although the IFB stated that the ear and neck protector was to be the Seer Model S-1286 or equal, it specified no characteristics of that item which were essential to the Government's needs. If the use of a lining other than foam rubber was a characteristic of the brand name product, and represented an essential need of the Government for reasons of the wearer's comfort, then that should have been explicitly stated in the IFB so that firms such as the protester offering other products would know what standards they had to meet.

Nevertheless, the agency's rejection of the protester's bid was proper because the Premier 7000 item did vary from the listed characteristics of the brand name item in two major respects. First, the IFB specified that the outer shell of the helmet be made of "compression molded fiberglass" while the protester's item is made of polycarbonate. In the agency's view, the use of polycarbonate is less desirable because that material becomes brittle with age and exposure to sunlight. Second, the IFB required that the helmet be provided with a head suspension unit which could be adjusted for size in one-eighth inch increments and allowed for adequate ventilation through the use of

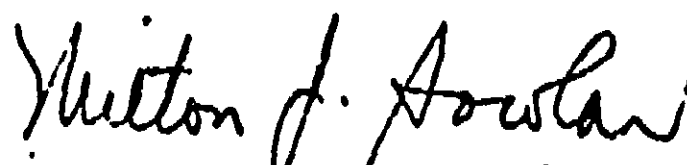
a "floating crown pad * * * attached to the hat band by a cradle of nylon web straps in a manner allowing for vertical adjustment of the helmet on the head * * *." The protester's helmet does not meet this requirement, as it uses a perforated liner whose size is adjusted by the insertion of polyurethane strips. In the agency's opinion, this did not afford adequate ventilation.

Although the protester states in general terms that its product will satisfy the Government's needs, it has offered no rebuttal of INS' position that the shell of the protester's helmet is made of a material different from, and more likely to become brittle than, that specified and that the head suspension unit in the protester's helmet differs in design from that specified and does not provide an equivalent amount of ventilation. Under these circumstances, we conclude that INS' rejection of the protester's bid was reasonable and this aspect of the protest is denied.

LEA also alleges that Hub improperly certified in its bid that its offered product--the brand name item--is a domestic end product as defined in the Buy American Act, 41 U.S.C. § 10a (1976). LEA argues that the brand name product is in reality manufactured by a Canadian company and therefore Hub cannot comply with its Buy American certification.

LEA's contention that the Seer Model S-1601 helmet is a Canadian end product conflicts with its own bid for that item in which LEA certified that the helmet was a "United States" end product. The successful bidder, Hub, also has furnished INS with a certification by Seer that the helmets will be manufactured in Colorado from domestic components.

Where a bidder does not exclude any end products from the Buy American certificate in its bid and does not indicate that it is offering anything other than domestic end products, as Hub did here, the acceptance of the bid will result in an obligation on the part of the bidder to furnish domestic end products. Moreover, compliance with that obligation is a matter of contract administration for the contracting agency and not our Office. We will not review assertions that the firm will not be able to comply with that obligation. Domar Industries Co., Inc., B-202735, September 4, 1981, 81-2 CPD 199. This portion of the protest is dismissed.

for 
Comptroller General
of the United States